

Exhibit 2

CONFIDENTIAL
Michael Ben-Jacob – October 11, 2021

Page 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MASTER DOCKET 18-MD-2865 (LAK)
CASE NO. 18-CV-09797

IN RE:
CUSTOMS AND TAX ADMINISTRATION OF
THE KINGDOM OF DENMARK
(SKATTEFORVALTNINGEN) TAX REFUND
SCHEME LITIGATION

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
MICHAEL BEN-JACOB
DATE: October 11, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

CONFIDENTIAL
Michael Ben-Jacob – October 11, 2021

Page 13

1 PROCEEDINGS

2

3 MICHAEL BEN-JACOB,

4 called as a witness, having been first

5 duly affirmed according to law, testifies as

6 follows:

7 * * * * *

8 EXAMINATION BY MR. MAGUIRE:

9 Q Good morning, Mr. Ben-Jacob?

10 A Good morning.

11 Q My name is Bill Maguire. I'm going
12 to be asking you some questions.

13 If there's any question that you
14 don't understand, please don't answer it.
15 Please just let me know you don't understand
16 the question and give me an opportunity to
17 clarify the question so you do understand it.

18 Is that okay?

19 A Sure. Thank you.

20 Q That way we'll have a clear record.
21 And we will know that when you have answered
22 a question, you understood the question.

23 Is that fair?

24 A Yes.

25 Q Now, sir, we're going to be talking

CONFIDENTIAL
Michael Ben-Jacob – October 11, 2021

Page 158

1 MR. DEWEY: I'm sorry, Bill. I'm
2 just -- is that better in terms of
3 hearing us?

4 (Whereupon a discussion was held
5 off the record.)

6 Q How did you get this opinion?

7 A Well, it was forwarded to us by the
8 client group, by someone at the client group.

9 I can't recall who it was.

10 Q And when did you get it?

11 A I don't recall.

12 Q Did you get it before the plans
13 engaged in Danish transactions or afterwards?

14 A I don't recall.

15 Q Did you read the opinion?

16 A I generally recall reading it at
17 the time it was received.

18 Q Do you know in which year you
19 received it?

20 MR. DEWEY: Objection.

21 A I really can't recall.

22 Q Is there anything you could look to
23 to see -- or that might refresh you as to
24 when you received this?

25 A Not that I can think of.

CONFIDENTIAL
Michael Ben-Jacob – October 11, 2021

Page 159

1 Q So when you received this, did you
2 understand this opinion?

3 A I can't say now what I thought at
4 the time. I don't recall what my thinking
5 was at the time of reading this opinion.

6 Q Do you recall whether there was
7 anything in this opinion that you did not
8 understand?

9 A I can't say now what my thinking
10 was at the time this opinion was received. I
11 don't recall.

12 Q Sir, if you turn to the second page
13 of the opinion, there's some numbered
14 paragraphs at the top.

15 A Yes.

16 Q You'll see there's a Paragraph 6
17 which says, "It is possible that in the
18 period until sale, the equities would be lent
19 out under a stock loan."

20 Do you see that?

21 A I see that.

22 Q Did you understand that in the
23 Danish transactions that your client group
24 was undertaking with Solo that there would be
25 a stock lending agreement, not as a matter of

CONFIDENTIAL
Michael Ben-Jacob – October 11, 2021

Page 257

1 plan assets with assets of other clients?

2 MR. DEWEY: Objection.

3 A I would need to review the entire
4 document to familiarize myself with its
5 provisions.

6 Q Did you understand that the plans
7 were required to be used for the exclusive
8 benefit of the participants and their
9 beneficiaries?

10 A I do generally recall that the
11 concept under pension plan law of the plan
12 assets being used for -- I don't remember if
13 the word is correctly exclusive, primary,
14 or -- I don't remember, but needs to be used
15 for the benefit of the plan.

16 Beneficiaries was an issue that was
17 raised with Mr. Woodard.

18 Q And what did Mr. Woodard say on
19 that subject?

20 A I don't recall the precise advice
21 that he gave. You would need to ask him.

22 Q Did your discussion with
23 Mr. Woodard include whether using the plans
24 for the Danish trading would benefit Solo and
25 your client group, and not just the plans

CONFIDENTIAL
Michael Ben-Jacob – October 11, 2021

Page 258

1 themselves?

2 MR. DEWEY: Objection.

3 A I do recall that the topic of
4 whether plan assets could be viewed as
5 benefiting others outside the plan was a
6 topic that was raised and addressed by
7 Mr. Woodard.

8 Q And you understood that in this
9 case, using the plans would bring substantial
10 benefits to Solo?

11 MR. DEWEY: Objection.

12 A I, at the time and today, have no
13 way of determining what benefits, you know,
14 were received by Solo and whether they --
15 whether Solo viewed them as substantial.

16 Q Well, you knew that Solo was going
17 to get two-thirds of the profits.

18 Right?

19 A I did.

20 Q And that, obviously, was a benefit
21 to Solo, was it not?

22 MR. DEWEY: Objection.

23 A And I would surmise that that
24 was -- that would be a benefit to Solo. I
25 don't know if that was substantial.

CONFIDENTIAL
Michael Ben-Jacob – October 11, 2021

Page 259

1 That's a matter for Solo.

2 Q And were the plans of the friends
3 and family, the 5 percent interests in the
4 partnerships, where their plans participated
5 in Danish trades, those plans would get
6 5 percent of what was left over after Solo
7 was paid off, and the other 95 percent would
8 go to the other members of the partnership.

9 Right?

10 MR. DEWEY: Objection.

11 A I'm sorry, sir. Could you repeat
12 the question? I'm not sure I understood your
13 question.

14 Q Yeah. The individuals that we were
15 talking about -- Lerner Altbach, Hermann,
16 those people -- all had plans that had a
17 5 percent share in their respective
18 partnerships.

19 Right?

20 A As I think I mentioned earlier, I
21 don't recall the specific allocation among
22 the various -- what we'll call "friends and
23 family plans."

24 Q But you will recall generally that
25 it was 5 percent or 10 percent?

CONFIDENTIAL
Michael Ben-Jacob – October 11, 2021

Page 260

1 A I recall it was in that general
2 range.

3 Q You understood that generally,
4 then, for those plans, 90 percent of the
5 benefit went to your client group?

6 MR. DEWEY: Objection.

7 A I'm sorry. Forgive me. I'm not
8 sure I follow your math. If -- even if they
9 had -- even if they had 5 percent and
10 70 percent went to -- or 60 percent went to
11 Solo, how does 90 percent go to the client?

12 Can you break down your math,
13 please?

14 Q Well, let's go through the math,
15 then.

16 So Solo gets 66 -- it gets
17 two-thirds and the plan gets one-third.

18 Right?

19 A Okay.

20 Q And if that plan is in a
21 partnership, then that one-third gets divided
22 up, 5 or 10 percent to the plan and the other
23 90 percent, say, of that remaining third --

24 A The remainder, yes. Yes, yes.

25 Q -- to your client group?

CONFIDENTIAL
Michael Ben-Jacob – October 11, 2021

Page 261

1 A Yes. So it's -- just to make sure
2 I understand you.

3 Q So your client group ends up
4 getting about 90 percent of the one-third?

5 A Of the one-third, yes. Now I
6 follow your math. So I'm sorry. Please ask
7 your question.

8 Q And that 90 percent of the
9 one-third was a benefit to your client group,
10 was it not?

11 A That's --

12 MR. DEWEY: Objection. Go ahead.

13 A That's my general understanding,
14 yes.

15 Q And did you discuss with anyone
16 whether using the plans for Danish trading
17 would be a benefit for the client group and
18 not just for the plans themselves?

19 MR. DEWEY: Objection.

20 A The benefit -- the economic benefit
21 related to the plan, any related pension law
22 issues surrounding that, were addressed by
23 Mr. Woodard.

24 Q Sir, if you have Exhibit 977 in
25 front of you, if you could go to the page